ular enterprise is joint, so as to make one party the agent of the other, is a question of fact to be decided in each particular case.[23]

It may be advisable then, to lay down the rule that contributory negligence should never be imputed; that is, if A sues B to recover damages suffered by A because of B's negligence, the contributory negligence of C should not be imputed to A. In the case of principal and agent, recognizing imputed negligence as a fiction, the negligence of the agent may nevertheless prevent recovery by the principal for the general reasons underlying the maxim *respondeat superior*. This exception should be recognized only in cases of express and unequivocal agencies, and the agency relationship should never be implied in order to apply the fiction of imputed negligence. The instant case, because of a community-interest statute creating a partnership between a husband and wife in relation to their property, falls within this one exception to the rule that the contributory negligence of another should never be imputed to the plaintiff.[24] The doctrine of imputed negligence is fast losing ground and should soon be of only academic and historical interest. It is to be hoped that the jurisdictions still clinging to it will soon fall in line with the majority, and will impute negligence only in cases where an express and unequivocal agency exists.

BUSINESS CO-OPERATION, THE "OPEN COMPETITION PLAN," AND THE SHERMAN ANTI-TRUST ACT

A new form of business association known as the "open competition plan" or "open price association" has again raised the question of what is restraint of trade within the meaning of the Sherman Act.[1] The asserted object of such associations is to eliminate "cut throat" competition and to enable their members to conduct their business more scientifically, with a sounder knowledge of trade conditions. The members contribute to a central bureau complete information about their business, such as the amount of sales, stock on hand, price lists, etc. These reports are then consolidated by an expert appointed by the association and sent out to the members. The frequency of reports and the details required vary in different associations, but the purpose is similar.[2] It may be easily seen that such an organization has a potential power to limit supply and fix prices, if sufficient co-operation or coercion exists among the members. The Supreme Court of the

[23] As to what constitutes a joint enterprise see (1918) 27 YALE LAW JOURNAL, 565; (1920) 5 IOWA L. BUL. 121.

[24] Each partner is a general agent for the other. Gilmore, *Partnership* (1911) 274.

[1] Act of July 2, 1890 (26 Stat. at L. 209).

[2] For a discussion of the formation, organization, and actual operation of such associations, see Naylor, *Trade Associations* (1921). For a radical viewpoint supporting such associations see Eddy, *The New Competition* (1912).

United States has recently held such an association illegal under the Sherman Act, as an undue restraint of trade, in the case of *American Column & Lumber Co. v. United States* (1921) 42 Sup. Ct. 114.

That competition is the life of trade and a necessity for the best economic interests of the community as a whole seems to be a generally accepted principle in law. It is not easy to determine what facts constitute an unlawful restraint of trade and competition, either at common law or under our numerous state and federal statutes. Agreements, the sole purpose of which was the suppression of competition, have nearly always been held to be unenforceable, irrespective of the degree of success in attaining the object and of the number and the power of the parties to the agreement. Thus pools among competitors made to regulate output, sales, and profits,[3] agreements dividing territory,[4] and contracts for the fixing of uniform prices[5] have been held illegal at common law.[6] Where the restraining agreement is merely auxiliary to a contract with other and lawful purposes, it will be held to be valid if the restraint is regarded as reasonable. The "rule of reason," later applied by the Supreme Court of the United States in construing the Sherman Act, originated in this line of cases.[7] Its historical development need not be traced here.

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[3] *Emery v. Ohio Candle Co.* (1890) 47 Ohio St. 320, 24 N. E. 660; *India Bagging Assoc. v. B. Kock & Co.* (1859) 14 La. Ann. 164; *contra, Skranika v. Scharinghausen* (1880) 8 Mo. App. 522 (where in fact there was no monopoly).

[4] *Am. Laundry Co. v. E. & W. Dry Cleaning Co.* (1917) 199 Ala. 154, 74 So. 58. See note in Corbin, *Cases on Contracts* (1921) 1239; but see *contra, Wickans v. Evans* (1829, Exch.) 3 You. & Jerv. 318, 329. Cf. also *National Benefit Co. v. Union Hospital Co.* (1891) 45 Minn. 272, 47 N. W. 806; *Fairbanks v. Leary* (1876) 40 Wis. 637.

[5] *Nester v. Continental Brewing Co.* (1894) 161 Pa. 473, 29 Atl. 102; *Morris Run Coal Co. v. Barclay Coal Co.* (1871) 68 Pa. 173; but see *Dolph v. Troy Laundry Machinery Co.* (1886, C. C. N. D. N. Y.) 28 Fed. 553.

Such a rule has been applied to agreements between skilled laborers to maintain standard wages. *More v. Bennett* (1892) 140 Ill. 69, 29 N. E. 888. No such general rule would be enforced against laborers and labor unions to-day. Anson, *Contract* (Corbin's ed. 1919) sec. 259a; 3 Williston, Contracts (1920) sec. 1655.

[6] Inasmuch as the Sherman Anti-Trust Law and the various state anti-trust laws were all passed to strengthen the prohibitions of the common law, all of the agreements in the preceding notes would be forbidden by statute. See *Shute v. Shute* (1918) 176 N. C. 462, 97 S. E. 392; *Love v. Kozy Theater* (1921, Ky.) 236 S. W. 243.

[7] See *Mitchell v. Reynolds* (1711, K. B.) 1 P. Wms. 181. As regards contracts the rule is well expressed: "If, considered with reference to the situation, business and objects of the parties, and in the light of all the surrounding circumstances with reference to which the contract was made, the restraint contracted for appears to have been for a just and honest purpose, for the protection of the legitimate interests of the party in whose favor it is imposed, reasonable as between them and not specially injurious to the public, the restraint will be held valid." *Hubbard v. Miller* (1873) 27 Mich. 15, 19; cf. *Diamond Match Co. v. Roeber* (1887) 106 N. Y. 473, 13 N. E. 419. See Kales, *Contracts and Combinations in Restraint of*

The development of the common-law rules was substantially the same in England and the United States, if we exclude certain minority views. Those rules made the unreasonable contract unenforceable, but did not otherwise penalize the parties for making it. In the United States however numerous anti-trust statutes have been passed, declaring various agreements and combinations to be crimes, creating remedies in tort actions in favor of injured competitors, and authorizing injunctions at the instance of both individuals and the government.[8]

Another factor that has become involved in the problem in the United States has been that of unfair competition,[9] usually considered as evidencing an intention to monopolize, and when coupled with a power to do so, deemed an overt act towards that end. In itself it is illegeal, although difficult of precise definition.[10]

In determining the illegality of organizations under anti-trust acts in criminal prosecutions or dissolution suits, a more liberal application of the rule of reason is found. The question concerns not merely the enforceability of the contract or of a restrictive covenant auxiliary to a lawful contract by the parties thereto; rather it is a case of the organization against the public, and it requires a balancing of the public benefit in having successful business organizations with the public detriment in having such organizations become oppressive. The shift from small to large economic units is an established fact, and it has gravely affected the economic policies of courts and legislatures. No doubt the form of the restraining agreement, combination, or trust will occasionally affect the question of the legality of the organization, but for the purpose of this discussion distinctions of this kind will be disregarded.[11]

Trade (1918) chs. 1, 2, 3; Jones, *The Trust Problem in the United States* (1921) 300, 301.

[8] See Macrosty, *Trust Movement in British Industry* (1907) 18-23; Levy, *The Sherman Law & English Doctrine* (1920) 6 CORN. L. QUART. 36, 45. Cf. *Mogul Case* (1889, C. A.) L. R. 23 Q. B. Div. 598, and *Thomsen v. Cayser* (1917) 243 U. S. 66, 37 Sup. Ct. 353. See (1917) 27 YALE LAW JOURNAL, 139. For a discussion of the English doctrine as applied to labor cases, see COMMENTS (1922) 31 YALE LAW JOURNAL, 539; for the American doctrine, see NOTES (1922) 35 HARV. L. REV. 459.

[9] In its broader and modern meaning, not in the narrow sense of fraud, passing off one's goods or business for that of another. See, Stevens, *Unfair Competition* (1917) 1-9; Haines, *Efforts to Define Unfair Competition* (1919) 29 YALE LAW JOURNAL, 1, 15, 18. For the common law on unfair competition, see Federal Trade Commission, *Memoranda on Unfair Competition at the Common Law* (1916).

[10] See *supra* note 9; the Clayton Act of Oct. 15, 1914 (38 Stat. at L. 730) defines certain acts as unfair. See also the Federal Trade Commission Act of Sept. 26, 1914 (38 Stat. at L. 717); see NOTZ, *New Phrases of Unfair Competition, National and International* (1920) 30 YALE LAW JOURNAL, 384; Notz, *American Foreign Trade* (1921) chs. 5-7.

[11] For a clear exposition of the various kinds of agreements see Jones, *op. cit.* ch. 2; Macrosty, *op. cit.* 4-18.

As the rule of reason has been adopted by the Supreme Court in construing the Sherman Act,[12] and generally by the state courts in construing similar state statutes,[13] it is necessary to examine the facts of each case in order to obtain even an indefinite idea of what constitutes an illegal organization. The cases seem to show (1) that where there has been a preponderance of size of the organization in the field it served, unfair methods used, and attempted control over prices and production, the organization was illegal;[14] (2) that where there has been a preponderance of size of the organization in the field it served, no unfair methods used, but overt acts evidencing an intention to monopolize, such as price fixing or limiting production, the majority of the courts have held the combination illegal; but where there has seemed to be no intention to monopolize, or actual harm to the public, several decisions have held it legal.[15] It is practically impossible to classify

[12] *Standard Oil Co. of New Jersey v. United States* (1911) 221 U. S. 1, 67, 68, 31 Sup. Ct. 502, 518, 519. For a review of the Supreme Court decisions, see Jones, *op. cit.* ch. 17; Kales, *op. cit.* ch. 8.

[13] For a collection of state statutes, see Haines, *op. cit.* 29 YALE LAW JOURNAL, 10, 11; see cases cited *infra* notes 14, 15; Joyce, *Monopolies* (1911) chs. 17, 24.

[14] *State v. Adams Lumber Co.* (1908) 81 Neb. 392, 116 N. W. 302; *Standard Oil Co. v. United States* (1911) 221 U. S. 1, 31 Sup. Ct. 502; *United States v. Keystone Watch Case Co.* (1915, E. D. Pa.) 218 Fed. 502; *United States v. Eastman Kodak Co.* (1915, W. D. N. Y.) 226 Fed. 62; *United States v. King* (1916, D. Mass.) 250 Fed. 908; *Belfi v. United States* (1919, C. C. A. 3d) 259 Fed. 822; *Thomsen v. Cayser* (1917) 243 U. S. 66, 37 Sup. Ct. 353; *United States v. Associated Bill Posters* (1916, N. D. Ill.) 235 Fed. 540; *Swift & Co. v. United States* (1905) 196 U. S. 375, 25 Sup. Ct. 276; *United States v. American Tobacco Co.* (1911) 221 U. S. 106, 31 Sup. Ct. 632; *Standard Sanitary Manufacturing Co. v. United States* (1912) 226 U. S. 20, 33 Sup. Ct. 9; *United States v. Reading Co.* (1912) 226 U. S. 324, 33 Sup. Ct. 90; *United States v. International Harvester Co.* (1914, D. Minn.) 214 Fed. 987; *United States v. Corn Products Refining Co.* (1916, S. D. N. Y.) 234 Fed. 964; *Connors v. Connolly* (1913) 86 Conn. 641, 86 Atl. 600; see *Duplex Printing Press Co. v. Deering* (1921) 254 U. S. 443, 41 Sup. Ct. 172.

[15] Illegal: *People v. Sheldon* (1893) 139 N. Y. 251, 34 N. E. 785; *Hooker & Woodward v. Vandewater* (1847, N. Y.) 4 Denio, 349; *Morris Run Coal Co. v. Barclay Coal Co.* (1871) 68 Pa. 173; *United States v. New England Fish Exchange* (1919, D. Mass.) 258 Fed. 732; *Pulpwood Co. v. Green Bay Paper & Fiber Co.* (1919) 168 Wis. 400, 170 N. W. 230; *United States v. Reading Co.* (1920) 253 U. S. 26, 40 Sup. Ct. 425 (but see three dissenting opinions); *State v. People's Ice Co.* (1912) 246 Mo. 168, 151 S. W. 101; *Addyston Pipe & Steel Co. v. U. S.* (1899) 175 U. S. 211, 20 Sup. Ct. 96; see *Brent v. Gay* (1912) 149 Ky. 615, 149 S. W. 915; *Reeves v. Decorah Farmers' Co-op* (1913) 160 Iowa, 194, 140 N. W. 844; *Pond Creek Coal Co. v. Riley Lester & Bros.* (1916) 171 Ky. 811, 188 S. W. 907; *Love v. Kozy Theater Co.* (1921, Ky.) 236 S. W. 243.

Legal: *United States v. American Can Co.* (1916, D. Md.) 230 Fed. 859; *United States v. Prince Line* (1915, S. D. N. Y.) 220 Fed. 230; *Lumbermen's Trust Co. v. Title Ins. & Inv. Co. of Tacoma* (1918, C. C. A. 9th) 248 Fed. 213 (a reasonable combination to save the companies; intention stressed); *State v. Duluth Board of Trade* (1909) 107 Minn. 506, 121 N. W. 395 (reasonable regula-

cases involving neither preponderant size nor the use of unfair methods. However, the greatest stress seems to be laid on intention; and where the court feels that the organization primarily aims to stifle competition[16] as contrasted with a purpose of avoiding financial disaster,[17] it has refused to sanction the agreement. Where prime necessities were involved the courts seem to have been stricter, although such a distinction is generally repudiated.[18] There is also some authority to the effect that power to control prices and a use of the power detrimental to the public must be shown.[19] Under American statutes size is important, but alone is not enough to render a combination illegal,[20] though

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tions of a grain exchange); *United States v. Board of Trade of Chicago* (1918) 246 U. S. 231, 38 Sup. Ct. 242 (a fixed price established, by rule, for part of day was reasonable for conduct of grain exchange). In the last two cases at least local monopolies exercised certain restraints, but the circumstances were such that the reasonableness of the restraint could easily be proved to the court. See also *Anaheim Citrus Fruit Assoc. v. Yeoman* (1921, Calif. App.) 197 Pac. 959 (must show the illegal intention to fix prices).

[16] *Recou v. Crosland* (1921, Fla.) 88 So. 380. Here A and B, rivals, combined. Although there seemed to be no evidence of intention to monopolize, the court held the contract illegal on the ground that it got rid of competition. Two judges dissented. See Joyce, *Monopolies* (1911) secs. 61, 67.

In the above case and the cases cited *infra* note 17, the question of the legality of the contract under the anti-trust acts was involved rather than the legality of an organization. What might be called an "embryo association" existed.

[17] *Kohart v. Skow* (1914) 163 App. Div. 899, 147 N. Y. Supp. 509. Here A and B agreed to fix prices in order to end a ruinous competition. The court supported it as reasonable. See also *Oakdale Mfg. Co. v. Garst* (1895) 18 R. I. 484, 28 Atl. 973; *Lumbermen's Trust Co. v. Title Ins. & Inv. Co., supra* note 15.

[18] *Ford v. Chicago Milk Shipper's Assoc.* (1895) 155 Ill. 166, 39 N. E. 651; *State v. Erickson* (1909) 54 Wash. 472, 103 Pac. 796. For a review of the early authorities see *Addyston Pipe & Steel Co. v. United States* (1898, C. C. A. 6th) 85 Fed. 271, opinion by Justice Taft.

[19] *United States v. Nelson* (1892, D. Minn.) 52 Fed. 646. Lumber dealers agreed to raise prices. The court sustained a demurrer to the *indictment* holding that power to control prices must be shown. *People v. Baff* (1917, Co. Ct.) 99 Misc. 684, 166 N. Y. Supp. 136 (must show that defendants dominated trade); *United States v. United States Steel Corp.* (1920) 251 U. S. 417, 40 Sup. Ct. 293 (size alone not illegal, must be misuse of power. Three justices dissenting); see *United States v. International Harvester Co.* (1914, D. Minn.) 214 Fed. 987, dissenting opinion of Judge Sanborn at p. 1010. See also cases cited *supra* note 15 where the size was preponderant and the organization legal.

[20] See *State v. Adams Lumber Co., supra* note 14; *Belfi v. United States, supra* note 14; *United States v. Eastman Kodak Co., supra* note 14; *United States v. Keystone Watch Case Co., supra* note 14; *United States v. American Can Co., supra* note 15; *Anaheim Citrus Fruit Assoc. v. Yeoman, supra* note 15; *United States v. United States Steel Corp., supra* note 19. But see *contra, Slaughter v. Thacker Coal & Coke Co.* (1904) 55 W. Va. 642, 47 S. E. 247 (power is the test); *Pulpwood Co. v. Green Bay Paper & Fiber Co., supra* note 15 (power used); *State v. People's Ice Co., supra* note 15 (rule of reason rejected); *People v. Sheldon, supra* note 15 (preponderant size makes association prima facie illegal); *Morris Run Coal Co. v. Barclay Coal Co., supra* note 15 (power sufficient).

little other evidence of intention to monopolize is necessary to make it so.[21]

Such seems to have been the general state of the law when the "open competition plan" first came before the courts. In the instant case the association was open to all. Its members controlled about one third of the output of the lumber mills of the country. No unfair methods were used against third parties. The secretary of the central bureau, however, sent out advice as to future market conditions and strongly recommended limiting production. This advice was followed to some extent. Prices increased from 33% to over 200% in some cases, but were not uniform in all parts of the country. A copy of each report was filed with the government. Meetings open to all were held by the members, at which trade conditions were discussed. The lower court enjoined the association from sending out reports or discussing present or future prices at their meetings.

The Supreme Court,[22] in an opinion written by Mr. Justice Clarke, held that the scheme was merely the old "gentleman's agreement" to fix prices in a new disguise; that there was at least moral coercion by the stronger members of the association on the weaker, which tended to enforce the agreement; that the bureau was the instrument which enforced this coercion; that consequently there was illegal restraint of trade.[23] On the other hand, Mr. Justice Brandeis, in a dissenting opinion, could not find either coercion on members or third parties, an established monopoly, a division of territory, or unreasonable restraint.[24] The majority opinion emphasized the detailed reports on future production, the strong advice in the reports sent to the members, the sanction of "financial interest, intimate personal contact, and business honor, all operating under the restraint of exposure of what would be deemed

[21] See cases cited *supra* note 20. For a discussion of the judicial view of the size of a corporation see Kales, *op. cit.* ch. 5.

[22] Justices Brandeis, Holmes, and McKenna dissented. For a complete statement of facts see the opinion of the lower court (1920, W. D. Tenn.) 263 Fed. 147.

[23] Mr. Justice Clarke said in part: "Genuine competitors do not make daily, weekly and monthly reports of the minutest details of a business to their rivals. . . ." (at p. 120)

"The plan is, essentially, simply an expansion of the gentleman's agreement of former days. . . ." "And to rely for maintenance of concerted action in both respects not on fines and forfeitures as in earlier days, but upon what experience has shown to be the more potent and dependable restraints, of business honor and social penalties. . . ." (at p. 121.) Mr. Justice Clarke also mentioned that the article involved was of prime necessity. As a rule courts do not make a distinction on this basis. See *supra* note 18.

[24] Mr. Justice Brandeis said in part: "Restraint of trade may be exerted upon rivals; upon buyers or upon sellers; upon employers or employed. Restraint may be exerted through force or fraud or agreement. It may be exerted through moral or legal obligations; through fear or through hope;. . . . Words of advice, seemingly innocent and perhaps benevolent, may restrain, when uttered under circumstances that make advice equivalent to command. For the essence of

bad faith and of trade punishment by powerful rivals," and the effect of the plan as shown by the rise in prices. The minority opinion stressed the lack of a dominant position in the industry, the lack of uniformity in the prices, and the effect of post-war conditions on prices in general, the trade advantage to the small mill owner, especially in the "back woods" districts, the economic advantage in that it prevented over-production, and the substitution of knowledge for ignorance in conducting one's business. In brief, the majority thought the restraint unreasonable, the minority thought it reasonable, or non-existent, in the last analysis a difference of opinion on an economic question.[25]

It would seem that the association might have been supported under existing law. Prices in themselves are not important. Lowering a price will not protect an organization otherwise illegal.[26] There must be power to control prices and an intention to exercise that power. It is somewhat doubtful whether such a power existed in this case. At least the association was not dominant. Undoubtedly a certain element of coercion or moral suasion exists between the members of such an association. Yet no extrinsic evidence of it was shown unless letters approving the plan because of improvement in the individual's business can be construed as such. Even if there was a definite agreement between the members regulating prices, would such an association be illegal when not preponderant or using unfair methods against third parties? As Mr. Justice Brandeis demonstrated, if the members had consolidated into one concern, the resulting corporation would have been legal under recent Supreme Court decisions, still assuming it did not use unfair methods against third parties.[27] Even when a complete local monopoly existed, price regulation has been permitted to a certain extent.[28]

The decision seems to be a backward step from the recent tendencies of the courts and the legislatures.[29] The essence of the opinion is that

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restraint is power; and power may arise merely out of position. Wherever a dominant position has been attained, restraint necessarily arises." (at p. 121.)

Further on he said: "The Sherman Law does not prohibit every lessening of competition; and it certainly does not command that competition shall be pursued blindly, ..." (at p. 122.)

And again: "It may be that the distribution of trade data, editorial comments and the conferences enabled the producers to obtain, on the average, higher prices. . . . The illegality of a combination under the Sherman Law lies, not in its effect upon price level but in the coercion thereby affected." (at p. 123.)

[25] For a discussion of the instant case see (1921) 54 CHIC. LEG. NEWS, 181.

[26] See *Slaughter v. Thacker Coal Coke Co.* (1904) 55 W. Va. 642, 47 S. E. 247; *Harding v. American Glucose Co.* (1899) 182 Ill. 551, 55 N. E. 577; *Central Ohio Salt Co. v. Guthrie* (1880) 35 Ohio St. 666.

[27] *United States v. U. S. Steel Corp.* (1920) 251 U. S. 417, 40 Sup. Ct. 293.

[28] See *State v. Duluth Board of Trade, supra* note 15; *United States v. Board of Trade of Chicago, supra* note 15.

[29] See Steele, *The Sherman Law: Its Past and Future* (1921) 6 CORN. L.

the public interest requires blind competition, at least so far as knowledge of future transactions is concerned. The giving of advice based on reports of future plans of the members was probably the final weight in tipping the scale. If no such plan is conducted and each individual member is forced to rely on his own judgment in interpreting the reports of past transactions, the activities of such an association may be permitted.[30]

Today's business requires scientific management and should not be forced to grope in the dark. The test to be applied to business methods can only be determined by the results of past regulation measured by economic standards. A *laissez-faire* policy is indeed attractive unless we can foresee a certainty of injury to those primarily to be considered in protective measures.

PRICE MAINTENANCE AND THE BEECHNUT DECISION

In *Federal Trade Commission v. Beechnut Packing Co.* (1922) 42 Sup. Ct. 150, the Supreme Court sustained the authority of the Federal Trade Commission to issue an order requiring a manufacturer to desist from carrying out a certain plan of resale of its branded products by which standard prices were maintained. In pursuance of this plan the company let it be generally known that it would refuse to sell to any jobbers, wholesalers, or retailers who failed to observe the resale prices specified, and devised an elaborate system to ascertain what dealers were not complying. The Federal Trade Commission condemned this as an unfair method of competition within the meaning of section 5 of the Federal Trade Commission Act.[1] There was no suggestion that the defendant had any sort of monopoly in the kinds of products which it manufactured.

QUART. 217, 234; Notz, *The Webb-Pomerene Law* (1919) 29 YALE LAW JOURNAL, 29; Levy, *The Sherman Law and the English Doctrine* (1920) 6 CORN. L. QUART. 36, 45.

[30] *United States v. American Linseed Co.* (1921, N. D. Ill.) 275 Fed. 939. The facts are similar except that no advice or future predictions as to market conditions were given. The association was held legal in the lower court under the Sherman Act. See comment on case (1921) 54 CHIC. LEG. NEWS, 125.

[1] Act of Sept. 26, 1914, ch. 311, sec. 5 (38 Stat. at L. 719). "That Act declares unlawful 'unfair methods of competition' and gives the Commission authority after hearing to make orders to compel the discontinuance of such methods. What shall constitute unfair methods of competition denounced by the Act is left without specific definition." From the principal case, 42 Sup. Ct. at p. 154.

"It is clear that this, like the Sherman Act, merely operates as a general license to the federal courts, when cases are presented within the federal jurisdictional subject of interstate and foreign commerce, to declare or make the law as to what are illegal methods of competition and what are not, according to the usage customarily adopted by common law courts, i. e., by applying the rule of reason." Kales, *Contracts & Combinations in Restraint of Trade* (1918) 140; see also Haines, *Efforts to Define Unfair Competition* (1919) 29 YALE LAW JOURNAL, 1.